

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KATIE ANNE PLATTE, ASHLEY BERDEN,
CULLIN STEWART and SAMUEL PAUL MANESS,

Plaintiffs,

v.

THOMAS TOWNSHIP, ET. AL.,

Defendants.

Case No. 1:05CV 10200
Honorable David M. Lawson
Magistrate Judge Binder

**ANSWER TO COMPLAINT
BY DEFENDANT THOMAS TOWNSHIP**

Now comes Defendant, THOMAS TOWNSHIP, by and through its attorneys,
KUPELIAN ORMOND & MAGY, P.C., and for its Answer to Plaintiffs' Complaint states as
follows:

1. Answering the corresponding paragraph hereto, this Defendant denies that
Plaintiffs were deprived of their Fourth Amendment right to be free from unreasonable searches
and seizures; further answering said paragraph, Defendant admits that it was acting under color
of state law. Defendant need not respond to the remaining legal allegations contained in the
Complaint.

2. Answering the corresponding paragraph hereto, Defendant admits the allegations
contained therein.

3. Answering the corresponding paragraph hereto, Defendant need not respond to the legal conclusions stated therein, but Defendant affirmatively states that all duties required under the law were fulfilled.

4. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

5. Answering the corresponding paragraph hereto, Defendant need not respond to the legal conclusions stated therein, but Defendant affirmatively states that all duties required under the law were fulfilled.

6. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

7. Answering the corresponding paragraph hereto, this Defendant does not challenge the jurisdiction of this Court to hear this matter.

8. Answering the corresponding paragraph hereto, this Defendant does not dispute that venue is properly laid.

9. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

10. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

11. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

12. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

13. Answering the corresponding paragraph hereto, this Defendant admits that it is a municipal corporation located in the county of Saginaw and organized under the laws of the state of Michigan. The remaining allegations are neither admitted nor denied for the reason that they call for a legal conclusion to which an answer is not required.

14. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

15. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

16. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

17. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

18. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

FACTS

19. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

20. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

21. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

22. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

23. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

24. Answering the corresponding paragraph hereto, this Defendant denies that when police officers showed up at the gathering, everyone went inside; rather, everyone went inside when fire department personnel arrived at the scene. Further, this Defendant denies that the police “demanded” to come into the house for the reason it is untrue. Further, this Defendant admits that later, Joe Latty advised officers that they could not come in unless they had a warrant.

25. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

26. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

27. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

28. Answering the corresponding paragraph hereto, this Defendant admits that the Plaintiff Platte was forced to remain for ten or fifteen minutes as the observation period passed prior to administration of a preliminary breath test. The remaining allegations are denied for the reason they are untrue.

29. Answering the corresponding paragraph hereto, this Defendant admits that Platte was advised that if she refused to take the test she would be in violation of the law.

30. Answering the corresponding paragraph hereto, this Defendant admits that when Platte took the breathalyzer test, she was not under arrest.

31. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

32. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

33. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

34. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

35. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

36. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

37. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

38. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

39. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

40. Answering the corresponding paragraph hereto, this Defendant admits that it enforces state law, the effects of such enforcement upon young adults is unknown, but it is hoped that it would discourage illegal consumption of alcohol by minors.

41. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

42. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

43. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

44. Answering the corresponding paragraph hereto, this Defendant admits that later Joe Latty told officers they could not come in unless they had a warrant.

45. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

46. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

47. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

48. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

49. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

50. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

51. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

52. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

53. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

54. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

55. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

56. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

57. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

58. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

59. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

60. Answering the corresponding paragraph hereto, this Defendant admits that Berden has been subjected to breathalyzer tests in the past without a warrant; however, the remaining allegations are denied for the reason that the Plaintiff registered a .17 on the PBT on March 15, 2003, and a .11 on the PBT on November 17, 2002.

61. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

62. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

63. Answering the corresponding paragraph hereto, this Defendant denies that its police officers broke up the referenced party and further, affirmatively states that the alleged incident Plaintiff described involved the Saginaw County Sheriff's Department, not the Thomas Township Police Department.

64. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

65. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

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68. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

69. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

70. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

71. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

72. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

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90. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

91. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

92. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

93. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

94. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

95. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

CAUSE OF ACTION

96. Answering the corresponding paragraph hereto, Defendant hereby states by reference each and every answer to paragraphs 1-95 of Plaintiffs' Complaint as though fully set forth herein.

97. Answering the corresponding paragraph hereto, Defendants need not respond to the legal conclusions stated therein, but Defendants affirmatively state that all duties required under the law were fulfilled.

98. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

99. Answering the corresponding paragraph hereto, Defendant admits the allegations contained therein.

100. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

101. Answering the corresponding paragraph hereto, Defendant need not respond to the legal conclusions stated therein, but Defendant affirmatively states that all duties required under the law were fulfilled.

102. Answering the corresponding paragraph hereto, Defendant need not respond to the legal conclusions stated therein, but Defendant affirmatively states that all duties required under the law were fulfilled.

103. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

104. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

105. Answering the corresponding paragraph hereto, Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations stated therein.

106. Answering the corresponding paragraph hereto, this Defendant admits that it has a policy of enforcing state law; the remaining allegations are denied for the reason that they are untrue.

107. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

108. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

109. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

110. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

111. a-e. Answering the corresponding paragraph hereto, Defendant denies each and every allegation contained therein for the reason that they are untrue.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Complaint with costs and attorney fees so wrongfully sustained by the necessity of defense.

KUPELIAN ORMOND & MAGY, P.C.

By: s/G. GUS MORRIS
G. GUS MORRIS (P32960)
Attorney for Defendant Thomas Township
25800 Northwestern Hwy., Suite 950
Southfield, Michigan 48075
(248) 357-0000
ggm@kompc.com

Date: September 13, 2005

AFFIRMATIVE AND/OR SPECIAL DEFENSES

1. The Plaintiffs have failed to state a claim upon which relief can be granted against the entity Thomas Township under 42 U.S.C. § 1983.
2. Plaintiffs' Complaint is barred by the doctrine of abstension.
3. Plaintiffs have failed to plead facts in support of their claim that Thomas Township acted pursuant to a policy of the Township, but rather was acting pursuant to a policy of the state of Michigan, i.e., enforcing state law.
4. That this Defendant reserves the right to assert and file any affirmative and/or special defenses that may become known through discovery or otherwise.

KUPELIAN ORMOND & MAGY, P.C.

By: s/G. GUS MORRIS
G. GUS MORRIS (P32960)
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25800 Northwestern Hwy., Suite 950
Southfield, Michigan 48075
(248) 357-0000
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Date: September 13, 2005